

STATE OF MICHIGAN
COURT OF APPEALS

FOX CREEK ASSOCIATES, LP,

Plaintiff-Appellant,

v

INDEPENDENCE TOWNSHIP,

Defendant-Appellee.

UNPUBLISHED

June 28, 2005

No. 252789

Oakland Circuit Court

LC No. 2001-036508-CZ

Before: Saad, P.J., and Zahra and Schuette, JJ.

PER CURIAM.

The trial court dismissed with prejudice the complaint filed by Fox Creek Associates, LP and it granted Independence Township's counterclaim. Fox Creek appeals the order, and we affirm.¹

This case arises out of Fox Creek's efforts to regulate use of an access road that connects the Fox Creek apartment complex to the Independence Woods mobile home park located on an adjoining parcel. Fox Creek claims that its proposal to install an emergency access gate, to prevent general traffic on the road, was reasonable and that, therefore, the trial court erred by entering an order that granted the Township's motion for an involuntary dismissal. We disagree.²

¹ We decline to address Fox Creek's argument regarding the trial court's ruling on its installation of speed bumps. Fox Creek's made only a cursory argument on this issue and cited no relevant authority. See *Silver Creek Twp v Corso*, 246 Mich App 94, 99; 631 NW2d 346 (2001). It is insufficient for Fox Creek to merely announce its position and leave it to this Court to discover and rationalize the basis for its argument, or to unravel its arguments and then search for authority to support or reject its position. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).

² "The involuntary dismissal of an action is appropriate where the trial court, when sitting as the finder of fact, is satisfied at the close of the plaintiff's evidence that 'on the facts and the law the plaintiff has shown no right to relief.'" MCR 2.504(B)(2); *Samuel D Begola Services v Wild Brothers*, 210 Mich App 636, 639; 534 NW2d 217 (1995). Rather than viewing the evidence in a light most favorable to the nonmoving party, as a trial court would do in addressing a motion

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Despite Fox Creek's attempt to recast its argument to require an administrative standard of review under Const 1963, art 6, § 28, Fox Creek did not cite this provision in its complaint. Rather, Fox Creek asserted that it was deprived of due process of law, in violation of Const 1963, art 1, § 17. In deciding a due process claim arising out of an ordinance, we consider whether the ordinance is reasonable. *Kropf v Sterling Heights*, 391 Mich 139, 157-158; 215 NW2d 179 (1974). When we consider an ordinance under this standard, "the presumption is in favor of its validity and courts may not invalidate ordinances unless the constitutional objections thereto are supported by competent evidence or appear on their face." *Id.* at 156, quoting *Northwood Properties Co v Royal Oak City Inspector*, 325 Mich 419, 422-423; 39 NW2d 25 (1949). Under the "reasonableness" requirement, a plaintiff must show that no reasonable governmental interest is advanced by the ordinance, or that it is arbitrary and capricious. *Kropf, supra* at 158.

The trial court correctly dismissed Fox Creek's claim that the Township violated its due process rights when it denied Fox Creek's request to construct a gate on the access road. After it weighed the testimony and evidence, the court held that Fox Creek failed to present any credible evidence that the Township's decision "was made for any reason other than to protect the safety and security of the citizens of the Township." The court concluded that neither expert presented by Fox Creek "testified credibly that the Township Fire Department inappropriately examined the circumstances, made an inappropriate decision, or did not have sufficient evidence before it to render its decision."

The record shows that, while Fox Creek presented evidence regarding the history of the Fox Creek development and the use of the connector road, there was a noticeable absence of evidence regarding the decision that the unobstructed road was necessary to provide emergency response units with quick access to the mobile home community. Other than innuendo and speculation, Fox Creek presented no evidence that the decision was made by arbitrary fiat, whimsical *ipse dixit*, or that there is no room for a legitimate difference of opinion concerning its reasonableness. To the contrary, the February 20, 2001 letter of the Fire Chief and Fire Marshal presents more than credible and sufficient evidence to show that the decision was well reasoned and supported by appropriate study and research. Furthermore, Fox Creek's expert witnesses both conceded that it would be reasonable for police, fire, and emergency agencies to arrive at different conclusions on this issue.

Moreover, the trial court's findings of fact did not constitute clear error. See *Warren, supra* at 389. On direct examination, Gerald Odom, part owner of the Fox Creek development, testified about the history of the relationship between the two complexes and the township, and about the current, unwanted traffic along the road. Though Fox Creek's counsel stated that it

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for directed verdict under MCR 2.515, the court judges credibility, weighs the evidence, and decides the case on the merits. *Warren v June's Mobile Home Village & Sales, Inc.*, 66 Mich App 386, 389; 239 NW2d 380 (1976). The trial court's determination will not be overturned on appeal unless it is clearly erroneous. *Id.* A court's findings of fact are clearly erroneous only if "on review of the entire record, [this Court] is left with the definite and firm conviction that a mistake has been made." *Peters v Gunnell, Inc.*, 253 Mich App 211, 222; 655 NW2d 582 (2002). Constitutional issues are reviewed de novo. *Tolksdorf v Griffith*, 464 Mich 1, 5; 626 NW2d 163 (2001).

would show that the Township's decision was arbitrary by showing that the Township merely wanted to allow general traffic on the road rather than emergency access, Fox Creek never presented such evidence.

Fox Creek presented the testimony of a traffic expert, who stated his concerns about the public traffic flow along the access road, and about possible gate options that he deemed reasonable for the site. But the expert never testified that it was unreasonable for the Township, in the interest of emergency response time, to deny the installation of a gate. Fox Creek also presented a title expert to testify that there was no easement on the road and, therefore, there was "no reason that that connecting drive should be open for any other purpose other than emergency vehicles." According to Fox Creek, this showed that the department's decision was arbitrary. But the title expert never testified that it was unreasonable for the Township to deny any gate in the interest of emergency response time.

The trial court correctly granted the Township's motion for involuntary dismissal because Fox Creek failed to present competent evidence to show that it was unreasonable for the Township to provide unrestricted emergency access to the mobile home community for the public health, safety, and welfare. Therefore, Fox Creek failed to meet its burden of rebutting the presumed reasonableness of the Township's action.³

Affirmed.

/s/ Henry William Saad

/s/ Brian K. Zahra

/s/ Bill Schuette

³ Because the proper legal standard to evaluate a substantive due process challenge of a zoning ordinance requires a determination whether the Township's decision was reasonable, see *Kropf, supra*, there is no reason to remand this case for further consideration of whether Fox Creek's proposed use was reasonable.